

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION

John W. McQueen,	:	
	:	
Petitioner	:	Civil Action 2:10-cv-00955
	:	
v.	:	Judge Smith
	:	
Deb. Timmer. Cooper, Warden	:	Magistrate Judge Abel
	:	
Respondent	:	
	:	

**ORDER**

Petitioner John McQueen's November 10, 2011 motion to proceed *in forma pauperis* on his petition for a writ of mandamus pending in the United States Court of Appeals for the Sixth Circuit (doc. 22) is DENIED as moot. The mandamus petition sought a ruling by this Court on the habeas corpus petition. This Court has entered judgment dismissing McQueen's habeas corpus petition. Further, the motion should have been made in the Court of Appeals, not in the trial court. See doc. 21 (October 21, 2011 letter to petitioner from a Court of Appeals case manager).

If any party objects to this Report and Recommendation, that party may, within fourteen (14) days, file and serve on all parties a motion for reconsideration by the Court, specifically designating this Report and Recommendation, and the part thereof in question, as well as the basis for objection thereto. 28 U.S.C. §636(b)(1)(B); Rule 72(b), Fed. R. Civ. P.

The parties are specifically advised that failure to object to the Report and Recommendation will result in a waiver of the right to *de novo* review by the District Judge and waiver of the right to appeal the judgment of the District Court. *Thomas v. Arn*, 474 U.S. 140, 150-52 (1985); *United States v. Walters*, 638 F.2d 947 (6th Cir. 1981). *See also, Small v. Secretary of Health and Human Services*, 892 F.2d 15, 16 (2d Cir. 1989).

s/Mark R. Abel  
United States Magistrate Judge